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J. Nevin Shaffer, Jr.
Shaffer & Culbertson
913 Gulf Breeze Parkway, Suite 43
Gulf Breeze FL 32561

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APR 18 2007

OFFICE OF PETITIONS

In re Application of
Stephens and Zrudsky
Application No. 10/685735
Filed: 10/14/2003
Attorney Docket No. 101-881

: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(a)

:

This is in response to the petition under 37 CFR 1.47(a), filed. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

The petition is dismissed.

Applicants are given TWO (2) MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should address the deficiencies noted below, except that the reply may include a declaration executed by the non-signing inventor(s). Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a). No additional petition fee is necessary for filing a request for reconsideration.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the reissue application papers; (2) an acceptable reissue oath or declaration in compliance with 37 CFR 1.63 and 1.175; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicants lack item (1) as set forth above.

As to item (1), it appears that applicants did not present the non-signing inventor with a complete copy of the reissue application papers. In the Declaration of Facts, Stephen J. Cochran, President, declared that subsequent to the assignment of his rights, non-signing inventor, Donald R. Zrudsky, and Assignee had numerous disputes and contentious litigation. Mr. Cochran indicated that the Mr. Zrudsky was not available to sign the reissue declaration.

Unless applicants presented the non-signing inventor with a complete copy of the reissue application, he could not attest that he reviewed and understands the contents of the specification, including the claims, and therefore, could not sign the declaration that he was given. Accordingly, applicants failed to show or provide proof that the non-signing inventor refused to sign the declaration. See MPEP 409.03(d).

To show that the non-signing inventor refused to join in the application, applicants must show that a complete copy of the reissue application was mailed to the non-signing inventor, personally or through his designated representative, and that he did not respond to the request that he sign the Declaration. The circumstances of any refusal to join in the filing of the application must be made by all persons with firsthand knowledge of the event. Where there is an express or oral refusal, that fact, along with the time and place of the refusal, must be stated in an affidavit or declaration **by the party to whom the refusal was made.** Where there is a written refusal, a copy of the document(s) evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by applicants that the non-signing inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence must be submitted. Whenever a non-signing inventor gives a reason for refusing to sign the reissue oath or declaration, that reason should be stated in the affidavit or declaration.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (571) 273-8300
 Attn: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions